

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

YOU LIN WANG,

Petitioner,

v.

RICHARD KAHN, et al.,

Respondents.

Case No. 20-cv-08033-BLF

**ORDER DENYING PETITIONER'S  
MOTION FOR SUMMARY  
JUDGMENT**

[Re: ECF No. 138]

This action for injunctive relief arises from an arbitration regarding fees for the tax services provided in association with two real estate sales in Palo Alto, California (the "Arbitration"). In November 2019, Respondent Richard Kahn and Forensic Professionals Group USA, Inc. ("FPG") initiated the Arbitration to recover unpaid fees against Petitioner Youlin Wang, as well as Petitioner's former attorney Derek Longstaff. ECF No. 1 ("Pet.") ¶¶ 24-25. After learning of the Arbitration, Petitioner filed this action in the Northern District of California, seeking to enjoin the Kahn Respondents from pursuing the Arbitration and to enjoin Longstaff from purporting to act on Petitioner's behalf in the Arbitration. Pet. ¶¶ 37-69.

Now before the Court is Petitioner's motion for summary judgment. ECF No. 138 ("MSJ"); *see also* 151 ("Reply"). Respondent Richard Kahn opposes the motion. ECF No. 150 ("Opp."). The Court held a hearing on the motion on December 1, 2022. *See* ECF No. 156. For the reasons discussed on the record and explained below, the Court DENIES the motion for summary judgment.

**I. BACKGROUND**

**A. Factual Background**

Petitioner, through his brother-in-law and authorized agent Guohua Xiong, retained

attorney Derek Longstaff to provide legal services for, *inter alia*, Petitioner's 2017 and 2018 tax returns. Declaration of Youlin Wang, ECF No. 23-4 Ex. A ("Wang Decl.") ¶¶ 3, 5; Declaration of Guohua "Greg" Xiong, ECF No. 117-2 ("Xiong Decl.") ¶¶ 3-5. Longstaff subsequently secured the tax services of Respondent Richard Kahn and FPG to assist with Petitioner's tax refunds. Xiong Decl. ¶¶ 8-9.

In the course of Longstaff's interactions with the Kahn and FPG on behalf of Petitioner, Longstaff created an allegedly fraudulent power of attorney ("POA") dated November 13, 2017, purportedly from Petitioner conferring Longstaff and his firm with broad authority to act on Petitioner's behalf. Wang Decl. ¶ 16, Ex. B ("November 2017 POA"). Petitioner asserts that he did not sign the POA and did not give Longstaff authority to act on his behalf. *Id.*

After creating the alleged fraudulent November 2017 POA from Petitioner and presenting himself as Petitioner's attorney-in-fact, Longstaff entered into a Partially Deferred Retainer and Fee Agreement ("PDRFA") and a Refund Disbursement Service ("RDS") Agreement with FPG on or about August 16, 2018. *See* Pet. Exs. A (PDRFA), B (RDS Agreement). The RDS Agreement contained the arbitration clause under which the Kahn Respondents initiated the underlying Arbitration. RDS Agreement at 4.

On November 6, 2019, Xiong terminated Longstaff as attorney for Petitioner. Xiong Decl. ¶ 20.

### **B. Arbitration History**

On or around November 20, 2019, Kahn and FPG initiated the Arbitration with the American Arbitration Association ("AAA") against Wang and Longstaff, individually and as purported power of attorney for Petitioner, alleging breach of the PDRFA and RDS Agreement for unpaid fees. Declaration of Dhaivat Shah, ECF No. 138-2 ("Shah Decl.") ¶ 2, Ex. A. Neither Longstaff nor Kahn notified Petitioner or Xiong that the Arbitration had been filed. *Id.* ¶ 3.

On December 10, 2019, after he had been terminated as Petitioner's attorney, Longstaff appeared in the Arbitration and purported to file an answer and counterclaims on behalf of both himself and Petitioner. Shah Decl. ¶ 4; *see also* Pet. Ex. E at 1-2. Longstaff further purported to make appearances and select an arbitrator. Shah Decl. ¶ 4.

1           Around mid-September 2020, Longstaff sent a copy of the Arbitration’s Amended Claim  
2 to Morgan, Lewis & Bockius LLP, former counsel to Petitioner’s company MagnoliaDrHomes  
3 LLC. Shah Decl. ¶ 5. Petitioner alleges that this was the first time that a party to the Arbitration  
4 attempted to provide the Arbitration pleadings to anyone affiliated with Petitioner. *Id.* ¶ 5. On  
5 October 31, 2020, Petitioner’s current counsel, Grellas Shah LLP, informed AAA and the parties  
6 to the Arbitration that Petitioner objected to arbitral jurisdiction. *Id.* ¶ 6.

### 7           **C. Procedural History**

8           On November 13, 2020, Petitioner filed the Petition in this Court to enjoin the Arbitration  
9 and enjoin Longstaff from representing Petitioner in the Arbitration. ECF No. 1. On April 5,  
10 2021, then-District Judge Koh granted an unopposed motion for preliminary injunction, enjoining  
11 Respondents from continuing the Arbitration. ECF No. 45. On January 4, 2022, Circuit Judge  
12 Koh sitting by designation reaffirmed the injunction by denying Kahn and FPG’s motion to vacate  
13 the preliminary injunction and to dismiss for lack of personal jurisdiction, subject matter  
14 jurisdiction, and venue. ECF No. 68. On June 10, 2022, Kahn and FPG filed their answer. ECF  
15 No. 91.

16           The Court entered default judgment against Longstaff on August 26, 2022. ECF Nos. 106-  
17 07. On August 31, 2022, the Court struck the answer as to FPG for failure to obtain counsel of  
18 record. ECF No. 108. On September 2, 2022, the Clerk entered default as to FPG. ECF No. 110.  
19 Kahn is thus the only remaining Respondent in the case.

20           Now before the Court is Wang’s motion for summary judgment.

## 21           **II. LEGAL STANDARD**

22           “A party is entitled to summary judgment if the ‘movant shows that there is no genuine  
23 dispute as to any material fact and the movant is entitled to judgment as a matter of law.’” *City of*  
24 *Pomona v. SQM N. Am. Corp.*, 750 F.3d 1036, 1049 (9th Cir. 2014) (quoting Fed. R. Civ. P.  
25 56(a)). “The moving party initially bears the burden of proving the absence of a genuine issue of  
26 material fact.” *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387 (9th Cir. 2010) (citing *Celotex*  
27 *Corp. v. Catrett*, 477 U.S. 317, 323 (1986)). “Where the non-moving party bears the burden of  
28 proof at trial, the moving party need only prove that there is an absence of evidence to support the

1 non-moving party's case.” *Id.* (citing *Celotex*, 477 U.S. at 325).

2 “Where the moving party meets that burden, the burden then shifts to the non-moving  
3 party to designate specific facts demonstrating the existence of genuine issues for trial.” *Oracle*,  
4 627 F.3d at 387 (citing *Celotex*, 477 U.S. at 324). “[T]he non-moving party must come forth with  
5 evidence from which a jury could reasonably render a verdict in the non-moving party’s favor.”  
6 *Id.* (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 252 (1986)). “The court must view the  
7 evidence in the light most favorable to the nonmovant and draw all reasonable inferences in the  
8 nonmovant's favor.” *City of Pomona*, 750 F.3d at 1049 (citing *Clicks Billiards Inc. v. Sixshooters*  
9 *Inc.*, 251 F.3d 1252, 1257 (9th Cir. 2001)). “Where the record taken as a whole could not lead a  
10 rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Id.* at  
11 1049-50 (quoting *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 587  
12 (1986)).

### 13 **III. REQUEST TO STRIKE**

14 The Court first considers Kahn’s request to “strike any inadmissible hearsay of Greg  
15 Xiong.” *Opp.* at 6. The Court finds there are no inadmissible hearsay statements in the  
16 declaration. *See* Fed. R. Evid. 801 (defining hearsay and identifying exceptions). The Court  
17 therefore OVERRULES Kahn’s request to strike the declaration.

### 18 **IV. ANALYSIS**

#### 19 **A. Whether Kahn Has Standing to Enforce the Agreement**

20 Wang argues that Kahn does not have standing to enforce the arbitration agreement. MSJ  
21 at 8-10. He asserts that because the RDS Agreement was between Wang and FPG, only FPG  
22 would have standing to enforce the agreement, and FPG has defaulted. *Id.* The Court must  
23 evaluate whether Kahn, as a nonsignatory to the RDS Agreement, has standing to enforce its  
24 arbitration clause.

25 “Generally, the contractual right to compel arbitration ‘may not be invoked by one who is  
26 not a party to the agreement and does not otherwise possess the right to compel arbitration.’”  
27 *Kramer v. Toyota Motor Corp.*, 705 F.3d 1122, 1126 (9th Cir. 2013) (quoting *Britton v. Co-op*  
28 *Banking Grp.*, 4 F.3d 742, 744 (9th Cir. 1993)). But “[t]he United States Supreme Court has held

1 that a litigant who is not a party to an arbitration agreement may invoke arbitration under the  
 2 [Federal Arbitration Act] if the relevant state contract law allows the litigant to enforce the  
 3 agreement.” *Id.* at 1128 (citing *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 632 (2009)).  
 4 Therefore, “[s]tate law determines whether a non-signatory to an agreement containing an  
 5 arbitration clause may compel arbitration.” *Ngo v. BMW of N. Am., LLC*, 23 F.4th 942, 946 (9th  
 6 Cir. 2022). “Under California law, ‘[g]eneral contract and agency principles apply in determining  
 7 the enforcement of an arbitration agreement by or against nonsignatories.’” *Levi Strauss & Co. v.*  
 8 *Aqua Dynamics Sys., Inc.*, No. 15-cv-04718-WHO, 2016 WL 6082415, at \*5 (N.D. Cal. Oct. 18,  
 9 2016) (quoting *Mundi v. Union Sec. Life Ins. Co.*, 555 F.3d 1042, 1045 (9th Cir. 2009)). “Among  
 10 these principles are ‘1) incorporation by reference; 2) assumption; 3) agency; 4) veil-piercing/alter  
 11 ego; and 5) estoppel.’” *Mundi*, 555 F.3d at 1045 (quoting *Comer v. Micor, Inc.*, 436 F.3d 1098,  
 12 1101 (9th Cir. 2006)). “A nonsignatory also can seek to enforce an arbitration agreement as a  
 13 third party beneficiary.” *Id.* at 1045 n.2 (citing *Comer*, 436 F.3d at 1101).

14 Wang argues that Kahn cannot enforce the arbitration agreement because he is not a third-  
 15 party beneficiary of the contract. MSJ at 8-9. Kahn does not dispute that he is not a third-party  
 16 beneficiary. *See Opp.* But the case law makes clear a party need not be a third-party beneficiary  
 17 to enforce an arbitration agreement. The Court will therefore determine whether any of the other  
 18 avenues apply.

19 Kahn argues that he can enforce the arbitration agreement based on the RDS Agreement  
 20 and the Asset Purchase Agreement, which was part of the FPG Dissolution Package. *Opp.* at 12-  
 21 13, 15-16, 18-19; *see* ECF No. 112-2 Ex. 3 (FPG Dissolution Package). Kahn argues that by this  
 22 document, “[o]wnership of the arbitration was transferred to Kahn in exchange for Kahn paying  
 23 off FPG’s debts.” *Opp.* at 12. He also notes that he, as an individual, was named in the arbitration  
 24 complaint. *Id.* at 13. Finally, Kahn states that he was the “sole shareholder and sole practitioner  
 25 of FPG.” *Id.* at 19. Wang asserts that the language of the Asset Purchase Agreement did not  
 26 assign Kahn the right to pursue FPG’s claims in arbitration. *Reply* at 5-6. He notes that the Asset  
 27 Purchase Agreement assigns Kahn the “rights, title and interest to the amount due” to FPG in the  
 28 arbitration, not the right to pursue the arbitration himself. *Id.* at 5 (quoting Asset Purchase

1 Agreement).

2 The Court finds that Kahn has standing to enforce the arbitration agreement as an agent of  
3 FPG. *See Mundi*, 555 F.3d at 1045; *see also Airtourist Holdings LLC v. HNA Grp.*, No. C 17-  
4 04989 JSW, 2018 WL 3069444, at \*3 (N.D. Cal. Mar. 27, 2018) (“Defendants are entitled to  
5 enforce the agreements pursuant to an agency doctrine . . .”). First, the Court notes that Kahn did  
6 not frame his argument in terms of agency doctrine. *See Opp.* However, Kahn did argue that he  
7 was the “sole shareholder and sole practitioner of FPG.” *Id.* at 19. And the Court filings by *pro se*  
8 litigants are to be construed liberally. *See Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). The  
9 Court will therefore evaluate Kahn’s standing to enforce the arbitration agreement as an agent.

10 “The status of [a party] as non-signator[y] is irrelevant where there is an agency  
11 relationship with a signatory.” *Airtourist Holdings*, 2018 WL 3069444, at \*3 (citing *Amisil*  
12 *Holdings, Ltd. v. Clarium Cap Mgmt.*, 622 F. Supp. 2d 825, 830 (N.D. Cal. 2007)). A court found  
13 the that non-signatory parties had standing as agents of a signatory company where they “were  
14 integral in the founding of [the company], they were its first and only employees, and [they]  
15 executed contracts on behalf of [the company].” *Id.* Here, the facts are similar. Kahn was the  
16 Director and sole shareholder of FPG. *See Asset Purchase Agreement.* He also executed contracts  
17 on behalf of FPG, including the RDS Agreement that contains the arbitration clause. *See RDS*  
18 *Agreement.* Under contract and agency principles, Kahn has standing to enforce the arbitration  
19 agreement even though he was not a signatory.

## 20 **B. Whether a Valid Contract Was Formed**

21 “[A]rbitration is a matter of contract and a party cannot be required to submit to arbitration  
22 any dispute which he has not agreed so to submit.” *AT&T Techs., Inc. v. Commc’ns Workers of*  
23 *Am.*, 475 U.S. 643, 648 (1986) (quoting *United Steelworkers of Am. v. Warrior & Gulf Navigation*  
24 *Co.*, 363 U.S. 574, 582 (1960)). A court “must first determine ‘whether a valid agreement to  
25 arbitrate exists.’” *Norcia v. Samsung Telecomms. Am., LLC*, 845 F.3d 1279, 1283 (9th Cir. 2017)  
26 (quoting *Chiron Corp. v. Ortho Diagnostic Sys., Inc.*, 207 F.3d 1126, 1130 (9th Cir. 2000)). The  
27 court will “‘apply ordinary state-law principles that govern the formation of contracts’ to decide  
28 whether an agreement to arbitrate exists.” *Id.* (quoting *First Options of Chi., Inc. v. Kaplan*, 514

U.S. 938, 944 (1995)). The Court thus evaluates whether there is a genuine dispute of material fact as to whether the RDS Agreement is a valid agreement to arbitrate.

### 1. Effect of FPG's Dissolution

Wang argues that FPG's default requires the Court deem true several allegations against FPG and that "[t]hese allegations establish that the contract containing the arbitration agreement was a product of fraud between Longstaff and FPG, of which Wang had no knowledge, and require the Court to find that it was not validly formed." MSJ at 10. But Wang then acknowledges that the fact that FPG defaulted does not mean the allegations are admitted as against Kahn, and he then argues that Kahn lacks standing. *Id.*

The Court already decided Kahn has standing to enforce the arbitration agreement. To the extent that Wang is arguing that the Court must find the contract invalid because FPG defaulted, that argument fails. As Wang notes, FPG's default does not mean the allegations are deemed admitted as against Kahn. *Cf.* Rutter Grp. Prac. Guide Fed. Civ. Proc. Before Trial, Calif. & 9th Cir. Eds. Ch. 6-D, §§ 6:121-6:129.5 (discussing how, in some situations, entering default judgment against one defendant while others remain could lead to inconsistent judgments). Therefore, the Court will analyze whether there is a genuine dispute of material fact as to whether the contract was formed.

### 2. Validity of Contract

The Court now turns to analyzing the validity of the RDS Agreement itself. Wang argues that the agreement is invalid because (1) he did not sign the RDS Agreement; (2) he did not ratify the RDS Agreement; and (3) he did not take actions giving Longstaff either actual or apparent authority to enter into the RDS Agreement. MSJ at 10-17.

Longstaff signed the RDS Agreement on Wang's behalf. *See* RDS Agreement. The parties dispute whether Longstaff was authorized to do so under a Power of Attorney. As stated above, Wang says that the November 2017 POA is fraudulent because Longstaff forged his signature. Wang Decl. ¶ 16. Further, he provides evidence from two other individuals supporting that the November 2017 POA was fraudulent. First, he provides a declaration from a handwriting expert that the November 2017 POA was a "fabricated document." Declaration of Patricia Fisher,



ECF No. 10-5 ¶¶ 16, 18. Second, he provides a declaration from the individual who purportedly notarized a February 2019 POA, which Wang asserts was also fraudulent. Declaration of Jayesh A. Patel, ECF No. 10-4 (“Patel Decl.”). The notary states that he did not notarize the February 2019 POA, and he provides a copy of the list of documents he notarized on that date, which does not show the February 2019 POA. Patel Decl. ¶¶ 3-8, Ex. A. While the disputed agreement was not signed pursuant to the February 2019 POA, the declaration as to that document’s fraudulence tends to suggest that the February 2017 POA may be fraudulent as well.

In his Opposition, Kahn makes much of a different POA, signed in June 2018 (“June 2018 POA”). Opp. at 13-14; *see* ECF No. 151-1 Ex. A (June 2018 POA). Wang does not dispute that the June 2018 limited POA was legitimate. Wang Decl. ¶ 14. But the June 2018 POA was a limited POA for the purposes of filing Wang’s tax returns with the IRS, and it did not give Longstaff the authority to enter the PDRFA or RDS Agreement. *See* June 2018 POA. Kahn does not dispute that the November 2017 POA, pursuant to which the PDRFA and RDS Agreement were signed, was fraudulent. Therefore, there is no dispute of fact as to whether the November 2017 POA was forged.

The Court next turns to ratification and apparent authority, both of which are related to principles of agency. “Agency is the fiduciary relationship that arises when one person (a ‘principal’) manifests assent to another person (an ‘agent’) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.” Restatement (Third) of Agency § 1.01 (2006). There are several ways to establish an agency relationship, including actual authority, apparent authority, and ratification. *Id.*; *see also Henderson v. United Student Aid Funds*, 918 F.3d 1068, 1073 (9th Cir. 2019). “An agency relationship arises only when the elements stated in § 1.01 are present. Whether a relationship is characterized as agency in an agreement between parties or in the context of industry or popular usage is not controlling.” Restatement § 1.02; *accord Henderson*, 918 F.3d at 1073.

“Ratification is the affirmance of a prior act done by another, whereby the act is given effect as if done by an agent acting with actual authority.” Restatement (Third) Of Agency § 4.01



(2006). “The fundamental test of ratification by conduct is whether the [party], with full knowledge of the material facts permitting rescission, has engaged in some unequivocal conduct giving rise to a reasonable inference that he or she intended the conduct to amount to a ratification.” *Aikins v. Tosco Refin. Co., Inc.*, No. C 98-00755-CRB, 1999 WL 179686, at \*4 (N.D. Cal. Mar. 26, 1999) (citing *Union Pac. R. Co. v. Zimmer*, 87 Cal. App. 2d 524, 532 (1948)).

The Court finds there is a genuine dispute of material fact as to whether Wang ratified the contract. Kahn states in his declaration that Wang made several payments to FPG pursuant to the disputed contracts. Declaration of Richard Kahn, ECF No. 112-1 (“Kahn Decl.”) at 42-45. And Kahn also states that Wang received refunds from the IRS pursuant to the disputed contracts. *Id.* If Wang took these actions, they could possibly be sufficient to constitute ratification. There is thus a genuine issue of material fact as to whether Wang ratified the contract. Because the Court finds there is a genuine dispute of material fact as to ratification, it need not reach the issue of apparent authority.

#### **V. ORDER**

For the foregoing reasons, IT IS HEREBY ORDERED that Petitioner’s Motion for Summary Judgment is DENIED.

Dated: December 15, 2022




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BETH LABSON FREEMAN  
United States District Judge